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# IN THE
# COURT OF APPEALS OF INDIANA

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| DEAN E. BLANCK, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 52A02-0510-CV-1001 |
| | ) | |
| INDIANA DEPARTMENT OF CORRECTION, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

CONSOLIDATED APPEALS FROM:
THE MIAMI SUPERIOR COURT
The Honorable Daniel C. Banina, Judge
Cause No. 52D01-0504-SC-360
THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0603-SC-345

**May 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

Dean E. Blanck appeals judgments in two small claim court cases he brought against the Indiana Department of Correction ("the DOC"). He challenges the trial court's judgment in his favor for $15.36 in Miami Superior Court Cause Number 52D01-0504-SC-360 ("Case SC-360"), and the trial court's judgment in favor of the DOC in LaPorte Superior Court Cause Number 46D03-0603-SC-345 ("Case SC-345"). We reverse and remand.

## Issues

Blanck presents three issues for our review, which we restate as follows:

I. Whether the trial courts in Case SC-360 and Case SC-345 erred by admitting the DOC's unsworn affidavits and supporting exhibits;

II. Whether the trial court in Case SC-360 erred by entering judgment in Blanck's favor for only $15.36; and

III. Whether the trial court in Case SC-345 erred by entering judgment in favor of the DOC.

## Facts and Procedural History

### *I. Case SC-360*

On or about April 3, 2004, while Blanck was incarcerated at the Indiana State Prison in Michigan City, he was assaulted by another inmate. Blanck sustained blunt force trauma to the back of his head, resulting in a blood clot in his brain. When Blanck was found unconscious in his cell on April 7, 2004, he was rushed to Saint Anthony Hospital, where he underwent surgery. On April 16, 2004, Blanck was released from the hospital and taken by ambulance to the infirmary at the Miami Correctional Facility in Miami County. Blanck claims that during this transfer, the DOC confiscated, misplaced and/or destroyed some of his

property, including four boxes of legal paperwork, two sweatshirts, one shaving mirror, one pair of black fleece shorts, three bath towels, and nine double-edged razors. In fact, DOC officials at the Miami Correctional Facility documented their confiscation of certain items of Blanck's property on April 16, 2004, including his legal paperwork and the razors, because the DOC determined that certain items were "not allowed" and that Blanck had "to [sic] much stuff." Appellant's App. (Case SC-360) at 18 (Blanck's Tender of Evidence at 1). On May 21, 2004, after Blanck had submitted several written requests to various DOC officials, the DOC returned the boxes of legal papers; however, Blanck "discovered that almost every document or case file [he] had relevant to litigations against the Indiana Department of Corrections had suddenly just vanished into thin air and were gone." *Id*. at 10.

On April 13, 2005, Blanck filed suit against the DOC in Miami Superior Court, Small Claims Division, alleging that the DOC was liable for the loss of his personal property. On the same day, the trial court ordered the parties to submit evidence "by affidavit along with all supporting exhibits." *Id*. at 7. On April 18, 2005, Blanck filed a signed, sworn, and notarized affidavit with supplemental exhibits. On May 18, 2005, Blanck filed a motion for summary judgment. On June 13, 2005, the DOC filed a motion to dismiss Blanck's summary judgment motion, which the trial court denied. On June 17, 2005, the DOC filed a response to Blanck's motion for summary judgment, which included counsel's argument and several designated documents but no sworn statement. On July 6, 2005, Blanck filed an affidavit in rebuttal to the DOC's response. On June 27, 2005, the DOC filed a notice to court of filing of affidavits in support of defense, along with an affidavit with exhibits, though the "affidavit" was not even signed. On July 14, 2005, Blanck filed a motion to strike the DOC's

submission, upon which the trial court did not rule. On September 26, 2005, the trial court denied Blanck's motion for summary judgment and entered judgment in his favor in the amount of $15.36.[1] Blanck appealed this judgment.

### *II. Case SC-345*

On June 13, 2005, Blanck was transferred from the Pendleton Correctional Facility to the Westville Maximum Control Facility to serve a one-year sentence of disciplinary segregation. When DOC officers packed Blanck's property, they placed some legal papers in a box along with his medicine bottles. When Blanck later unpacked the box, he discovered that some of his liquid medicine had spilled and ruined his legal papers.

On March 6, 2006, Blanck filed a pro se notice of claim in the LaPorte Superior Court, Small Claims Division, alleging that the DOC had negligently destroyed his personal property. On May 30, 2006, the trial court ordered the parties to submit affidavits and supporting exhibits. On June 20, 2006, Blanck filed an affidavit of events and supporting exhibits, and on July 24, 2006, the DOC filed a defense affidavit that lacked a sworn statement. On August 8, 2006, Blanck filed a verified motion to strike the DOC's pleadings and rebuttal, which the trial court denied a week later. On November 6, 2006, Blanck filed a motion for default judgment. On November 9, 2006, the trial court denied Blanck's motion for default judgment and found in favor of the DOC. Blanck appealed this judgment.

On February 23, 2007, Blanck filed a motion to consolidate his appeals of Case SC-

[1] The trial court found that Blanck had proven by a preponderance of the evidence that the DOC was liable for the loss of his gym shorts, which were valued at $13.50, and a plastic mug, which was valued at $1.86. *See* Appellant's App. (Case SC-360) at 64.

360 and Case SC-345 because "[b]oth appeals present the same facts, issues, and questions for this Court's review." Motion for Consolidation at 1. On March 22, 2007, this Court granted Blanck's motion to consolidate.

**Discussion and Decision**

Generally, judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). However, where a small claims case turns solely on documentary evidence, we review the judgment de novo, just as we review summary judgment rulings and other "paper records." *Id*. at 1069; *see also Harrison v. Thomas*, 761 N.E.2d 816, 818 (Ind. 2002) (reviewing the trial court's decision de novo after a bench trial where the parties relied on documentary evidence).

As for admissibility of evidence in small claims court, we look to Indiana Small Claims Rule 8(A), which provides:

> The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.

We are deferential in our review of a small claims court's procedural and evidentiary decisions. *Garner v. Kovalak*, 817 N.E.2d 311, 313 (Ind. Ct. App. 2004).

The parties agree that the law of bailment applies to Blanck's claims. A bailment is an agreement, either express or implied, that one person will entrust personal property to another

for a specific purpose and that when the purpose is accomplished, the bailee will return the property to the bailor. *Pitman v. Pitman*, 717 N.E.2d 627, 631 (Ind. Ct. App. 1999). When the evidence shows that the bailee received the property at issue in good condition and it was damaged before being returned to the bailor, or lost and not returned at all, an inference is raised that the bailee was negligent. *Id*. at 632. This inference establishes a prima facie case for the bailor and shifts the burden of production to the bailee. *Norris Automotive Serv. v. Melton*, 526 N.E.2d 1023, 1025 (Ind. Ct. App. 1988). In the absence of a bailment contract creating absolute liability the bailee can rebut the inference of negligence by presenting evidence tending to prove that the loss, damage, or theft occurred without his fault or neglect. *Id*. If the bailee meets his burden of production, the burden shifts back to the bailor, who must then prove that the bailee failed to act in conformity with the expected standard of care. *Id*. at 1026.

The duty of care that the bailee owes to the bailor depends on the benefit that the parties derive from the bailment. *Pitman*, 717 N.E.2d at 631. A bailee is required to use only "slight care" when a bailment is for the sole benefit of the bailor, "great care" when the bailment is for the sole benefit of the bailee, and "ordinary care" when the bailment is for the parties' mutual benefit. *Id*. The trial court in Case SC-345 determined, and we agree, that the DOC owed to Blanck a duty of slight care because its packing and delivery of his property from one facility to another was done solely for his benefit.

In Case SC-360 and Case SC-345, the trial courts ordered the parties to present evidence in the form of affidavits and exhibits in place of a hearing. *See Hill v. Duckworth*, 679 N.E.2d 938, 939 (Ind. Ct. App. 1997) (a court cannot secure attendance of incarcerated

plaintiff at a civil action unrelated to the case resulting in incarceration). The Indiana Small Claims Manual defines "affidavit" as "[a] written statement made upon affirmation that the statement is true under the penalty of perjury or under oath before a notary public or other person authorized to administer oaths." Indiana Judicial Center Small Claims Manual (2005) at ii. In each case, Blanck presented evidence in the form of his own sworn and notarized statement, along with various exhibits. In Case SC-360, Blanck identified $1,500.00 worth of personal property that he alleged was lost during its transfer from the Indiana State Prison to the Miami Correctional Facility. In Case SC-345, Blanck presented evidence that the DOC officers' packing method caused many of his legal papers to be destroyed by spilled medicine. He claimed damages in the amount of $400.00.

In both cases, the DOC submitted written responses to Blanck's claims but failed to present proper affidavits as ordered by the trial courts. In Case SC-360, the DOC filed a document titled "State Defendants' Defense Affidavit With Exhibits[,]" but this document contains no affirmation of truth and it is not notarized. Furthermore, the preparer of the document is not named, and the document is not signed. In Case SC-345, the DOC filed a "State Defendants' Defense Affidavit[,]" signed by a DOC paralegal under oath before a notary public. It was not a sworn statement, however, and the bulk of it is legal argument.

Blanck filed motions to strike in both cases, alleging that the DOC's submissions were inadmissible because they were not sworn or notarized and thus did not comply with the court's order to submit evidence in the form of affidavits. In Case SC-345, the DOC concedes that its own affidavit "probably should have been struck." Appellee's Br. (Case SC-345) at 5. In Case SC-360, it argues that "[although] certainly better practice for the

DOC would have been to certify its evidence pursuant to the trial rules," the DOC's submission may have complied with "informal procedures of the small claims rules." Appellee's Br. (Case SC-360) at 6. In our view, however, the small claims court rules do not permit a level of informality such that testimony need not be sworn and exhibits need not be put in context by someone with personal knowledge of the events giving rise to the dispute. *See, e.g.*, Indiana Small Claims Rule 8(B) ("All testimony shall be given under oath or affirmation.").[2]

We agree with Blanck that the DOC's so-called "affidavits" did not satisfy the trial courts' orders or the small claims rules, and thus the trial courts erred in denying his motions to strike.[3] The DOC argues that even if the decisions to admit its submissions were in error, they were harmless errors because Blanck failed to prove his claims by a preponderance of the evidence. We disagree. In both cases, Blanck presented his own sworn statements that the DOC received various personal property items at the time of his transfer from one facility to another, that some of the property was damaged or destroyed before it was returned to Blanck, and that some was not returned at all. This evidence raised an inference of negligence. *Pitman*, 717 N.E.2d at 632. In order to overcome this inference and shift the

[2] The deficiency of the DOC's pleadings in these cases suggests that it did not take Blanck's claims at all seriously and thus did not feel it necessary to comply with the trial court's orders regarding evidence submission or the small claims rules. We admonish the DOC and its counsel against such carelessness in the future.

[3] Although the trial court in Case SC-360 did not actually rule on Blanck's motion to strike, it impliedly denied the motion when it entered judgment for the DOC and explained that at least one document submitted by the DOC had influenced its decision. See note 5 below. Because we reverse the trial court's judgment on other grounds, we need not address Blanck's argument that the trial court's failure to specifically rule on his motion to strike was reversible error.

burden back to Blanck, the DOC was required to present rebuttal evidence, which it simply failed to do in both cases.

The trial court in Case SC-360 erred when it found the DOC liable for $15.36, the value of only two of Blanck's missing items. As discussed above, the DOC failed to present any competent evidence rebutting the inference of negligence raised by Blanck as to *all* the items described in his verified list of lost property,[4] which was submitted to the trial court on June 16, 2005.[5] *See* Appellant's App. (Case SC-360) at 64-65. Likewise, the trial court in Case SC-345 erred when it ruled in favor of the DOC, as the DOC also failed in that case to present evidence rebutting Blanck's sworn affidavit.

We hereby reverse the trial courts' judgments in Case SC-360 and Case SC-345 and remand. We order the Miami Superior Court to enter judgment in Blanck's favor regarding all the property shown in Blanck's verified list of lost property. We order the LaPorte Superior Court to enter judgment in Blanck's favor in Case SC-345. We order both courts to determine damages in light of these revised judgments.

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[4] In its submissions to the trial court, the DOC never disputed Blanck's claim that he surrendered all of these items to the DOC's possession when he was transported from the Indiana State Prison to the hospital on April 7, 2004.

Reversed and remanded with instructions.

SULLIVAN, J., and SHARPNACK, J., concur.

[5] In its order, the trial court in Case SC-360 wrote, "Plaintiff also alleges that the Defendants improperly disposed of his paperwork. After reviewing the Affidavits the Court finds that … Plaintiff failed to comply with Department of Correction policy regarding disposition of his property." Appellant's App. at 144. The court was clearly referring to a form entitled "Disposition of Offender Personal Property/ Correspondence[,]" which was included as an exhibit to the DOC's unsworn submissions and which the DOC alleged was "filled out" or "completed" on April 23, 2004. *See* Appellant's App. (SC-360) at 73, 82; *see also id.* at 110 (State Defendants' Defense Affidavit With Exhibits, Exhibit E). The form includes a section for the prisoner to designate what he would like done with the confiscated property, e.g., given to charity, mailed to someone, or returned to him (minus any prohibited items). The form also states that if it is not returned to the DOC within sixty days, the items may be destroyed. The DOC alleged that Blanck failed to return the completed form within sixty days, thereby authorizing the DOC to destroy his property. Blanck denies having seen this disposition form prior to June 23, 2005, and the DOC fails to present any evidence—and in fact does not even allege—that the form was actually delivered to Blanck at all, let alone on or around April 23, 2004. At any rate, as discussed above, the form was inadmissible as part of the DOC's improper submissions.